

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 453 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAJUBHAI MATHURBHAI TALPADA THROUGH BROTHER

Versus

STATE OF GUJARAT

Appearance:

MR CB DASTOOR for Petitioner

MR KT DAVE Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/04/2000

ORAL JUDGEMENT

1. The Commissioner of Police, Ahmedabad city, Ahmedabad, passed an order on 18.11.1999 detaining Rajubhai Mathurbhai Talpada of Gutal, Tal.Nadiad, district Kheda in exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985.

2. The detaining authority took into consideration one offence registered against the detenu under the Bombay Prohibition Act. The detaining authority also considered statements of two anonymous witnesses and came to the conclusion that the detenu is a bootlegger. His activities are detrimental to the public order and that he is required to be immediately prevented from pursuing his illegal and anti social activities. The detaining authority exercised powers under sec. 9(2) of the PASA Act in respect of the identity of two anonymous witnesses, after recording a satisfaction that the fear expressed by the witnesses qua the detenu is correct and genuine. The detaining authority observed that the detenu is in judicial custody but he may be released on bail and may continue his activities and, therefore, he is required to be immediately detained.

3. The detenu challenges the order of detention on various grounds, however, Mr. Dastoor learned advocate for the petitioner submitted that the order based on a single and solitary registered offence. Two statements relied upon by the detaining authority are verified by the detaining authority on November 18, 1999 and the order passed on that very day. Therefore, according to Mr Dastoor, there is improper exercise of powers under sec.9(2) of the PASA Act which has affected the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution of India. He, therefore, prays that the petition be allowed.

4. Mr KT Dave, learned AGP opposed this petition.

5. Having regard to the rival side contentions, at the out set, it may be noted that statements of two anonymous witnesses were recorded on November 17, 1999 and the same were verified by the detaining authority on 18th November, 1999. The order of detention was passed on that very day i.e. 18th November, 1999. As such, there was no time for the detaining authority to undertake the exercise of genuinely verifying the correctness and genuineness of the fear expressed by these witnesses and the need for exercise of powers under sec. 9(2) of the PASA Act in public interest vis-a-vis the right of the detenu guaranteed under the Constitution of India [Article 22(5)]. The detaining authority while exercising the powers under sec. 9(2) of the PASA Act is expected to undertake such exercise to assure itself about the correctness and genuineness of

the fear expressed by the witnesses qua the detenu. The authority has to strike a balance between the right of the detenu of making an effective representation on one hand and the public interest on the other. The detaining authority, in the instant case, has not filed any affidavit in reply nor is there contemporaneous material to indicate that the detaining authority has undertaken such exercise. The subjective satisfaction for the need for exercise of powers under sec. 9(2) of the PASA Act, therefore, cannot be considered as genuine. This can be said to have affected the right of the detenu of making an effective representation. (Bai Amina vs. State of Gujarat, reported in 1981 GLR p. 1186 & Kalidas Chandubhai Kahar vs. State of Gujarat & Ors., reported in 1993(2) GLR p. 1659)

6. So far as the registered offence is concerned, it may be noted that the petitioner was in judicial custody in respect of that very offence. There appears nothing to indicate that he had applied for bail. There are no other antecedent to indicate the bootlegging activities on the part of the detenu. The detaining authority has not shown any compelling reason for passing the order of detention while the detenu was in judicial custody. This would vitiate the order of detention as held in the case of Sanjeev Kumar aggrawal vs. Union of India & Others, reported in AIR 1990 SC 1202.

7. In view of the above discussion, the petition deserves to be allowed and the same is allowed. The impugned order passed by the Commissioner of Police, Ahmedabad City, Ahmedabad dated 18.11.1999 in respect of Rajubhai Mathurbhai Talpada, is hereby quashed and set aside. The detenu be set at liberty forthwith, if not required for any other case. Rule is made absolute with no order as to costs.

(A.L. DAVE, J.)

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